



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: February 5, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *J. G. for BB*
Sandy Chalmers, Administrator, Trade and Consumer Protection Division *[Signature]*

SUBJECT: Ch. ATCP 125, Manufactured Home Communities – Fair Trade Practices
(Hearing Draft)

PRESENTED BY: Michelle Reinen

REQUESTED ACTION:

At the February 19, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize public hearings on a proposed rule (copy attached) related to manufactured home communities.

SUMMARY:

Background

ATCP 125 was first promulgated as Ag 125 in 1972. At the time, zoning restrictions led to a shortage of mobile home sites in many areas of the state, which inhibited competition and market choice. The rule was promulgated to address unfair trade practices and methods of competition that emerged in the industry. The rule prohibited mobile home park operators from using unfair or deceptive trade practices. It also required that rental contracts be in writing and contain specific disclosures. The rule was revised in 1976 and again in 1987.

Rule Content

This rule does all of the following:

- Updates the existing rule by incorporating and defining “manufactured home” and “manufactured home community.” Current definitions applies only to “mobile homes” and “mobile home parks.”

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- Repeals the definition “television service” and creates the definition “electronic communication service” which will specify the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

Under the current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is three years or greater, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months’ rent, whichever is less. This rule updates the maximum security deposit to \$750, or two months’ rent, whichever is less.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The federal government does not generally regulate manufactured home sales or rental practices. However, Congress did pass the National Manufactured Housing Construction and Safety Standards Act of 1974, which direct the Department of Housing and Urban Development (HUD) to develop regulations; which are now known as the Federal Manufactured Housing Construction and Safety Standards.

Comparison with Rules in Adjacent States

Illinois statutes contain the Mobile Home Landlord and Tenant Rights Act. Among other things, this act restricts park owners from prohibiting television antennas, requires written leases, allows for temporary occupancy in certain situations, requires park owners to disclose information about rent charged during the last five years and projections for the next three, and restricts park owners’ ability to control the sale of mobile homes within the park.

Minnesota administrative code regulates mobile home parks and the methods park owners can use to bill residents for utility costs incurred by the community. For example, rental agreements must be in writing and specify certain terms and conditions related to the location of the lot, amount of rent, services or facilities that the park owner agrees to provide, and the name of any person holding a security interest in the resident's home. Minnesota law prohibits park owners from requiring residents to use the services of a particular dealer or broker when selling their home, or buy goods or services from a particular vendor.

Iowa does not have any laws in place related to mobile or manufactured homes or parks. Iowa legislation was introduced in 2011 to grant mobile home residents rights similar to tenants and proposed to place restrictions on park operators operating as real estate agents. This legislation did not pass.

Michigan has law in place related to mobile home park owners and specifies the rights of a tenant. Park owners are prohibited from charging entrance and exit fees, charging more than 1.5 times the amount of monthly rent as a security deposit and cannot require a person to buy a mobile home from another person as a condition of renting space in that park. Park owners must offer tenants a written lease for one year or more, and provide a copy of rules that govern maintenance, pets, fees, and charges that may be incurred by the tenant. Park owners must keep specific written records for each tenant.

Summary of Factual Data and Analytical Methodologies

According to the Department of Safety and Professional Services web page (www.dsps.wisconsin.gov), there are approximately 1,074 licensed manufactured home communities in Wisconsin, with a total of 52,316 home sites (these statistics are from an on-line listing of licensed manufactured home parks by DSPS (March, 2011)).

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

DATCP anticipates that the economic impact of this rule will be minimal. This rule makes some changes and updates to existing ch. ATCP 125; but the policy changes from existing rule are generally minor and are not expected to have a significant effect on small business or economic impact.

Effect on Small Business

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make some minor changes to park operators' duties and responsibilities, but it does not represent major changes from current rule. Therefore, the effect on small business is expected to be minimal.

Next Steps

If the Board authorizes public hearings on this rule, DATCP will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. DATCP will hold public hearings on the dates and at the locations specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, DATCP will prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, DATCP will transmit that final draft rule to the Legislature for review by appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to repeal* ATCP 125.01 (8), and 125.03 (4) (c) (Note); *to renumber and amend* ATCP
3 125.01 (1); *to amend* ATCP 125 (Title), 125.01 (2), (3), (7) (intro), (9), and (10) (a), (c) and (d),
4 125.02 (1) to (4), 125.03 (1) (intro.), (a), (d), (e), (f) and (g) and (4) (a), 125.04 (1) (intro.), (b)
5 and (c), (2) (d) and (e), and (3) (a) and (b), 125.05 (Title), (2) (b), (c) and (f), (3) and (4), 125.06
6 (Title) and (1), 125.07 (Title) and (1), 125.08 (1) and (Note) and (3), 125.09 (1), (3) and (4) and
7 (Note); and 134.02 (2); and to *create* ATCP 125.01 (1e) and (1m), 125.03 (1) (am), (1) (em) and
8 (1) (h); *relating to* Manufactured Home Communities – Fair Trade Practices, and affecting small
9 business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: s. 100.20 (1), Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 100.20 (2), Stats.

Explanation of Statutory Authority

DATCP has broad general authority to interpret statutes under its jurisdiction (see s. 93.07(1), Stats.)

DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate rules forbidding methods of competition or trade practices which the department determines to be unfair, and to prescribe fair methods of competition and trade practices. Section 100.20 (2) (b), Stats., prohibits DATCP from promulgating any rules that regulates the provision of water or sewer service by a manufactured home community operator.

Related Statutes and Rules

Subchapter V of Ch. 101, Stats., regulates manufactured homes and mobile homes and establishes licensing programs within the Wisconsin Department of Safety and Professional Services (DSPS) for manufactured home community operators, dealers, installers, salespersons, and manufacturers. This subchapter also establishes the state system for certifying titles of ownership on mobile homes and manufactured homes; and contains a number of requirements and standards related to the homes themselves, water and sewer connections, and standards for manufactured home communities.

Chapter 704, Stats., regulates transactions between landlords and both residential and non-residential tenants. The department does not administer ch. 704. Stats.

Section 710.15, Stats., contains several provisions related to manufactured and mobile home community regulations, including a prohibition against operators considering the age of a mobile home or manufactured home as a determining factor in leasing a lot to that resident.

Chapter ATCP 134, Wis. Admin. Code, regulates relationships between landlords and tenants in residential rental transactions, including prohibiting a landlord from renting condemned premises and prescribing procedures for handling security deposits.

Chapter SPS 326, Wis. Admin. Code, regulates standards for manufactured home communities, including the regulation of park operators' delivery and billing of water and sewer services. Chapter SPS 326 specifies the minimum width of streets and the provision of fire hydrants, and all plans for new manufactured home communities or the expansion of existing manufactured home communities, must be approved by DSPS.

Plain Language Analysis

Background

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Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

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Effect on Small Business

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make minor changes to park operators' duties and responsibilities, but will only have a very minor monetary impact. For more detail on the effect of the proposed rule on small business, see the attached *Initial Regulatory Flexibility Analysis*.

DATCP Contact

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Place Where Comments can be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

Kevin LeRoy
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4928
E-Mail: kevin.leroy@wi.gov

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 SECTION 1. ATCP 125 (Title) is amended to read:

2 ATCP 125 (Title) ~~MOBILE~~ MANUFACTURED HOME PARKS COMMUNITIES –
3 FAIR TRADE PRACTICES

4 SECTION 2. ATCP 125.01 (1) is renumbered ATCP 125.01 (1s) and amended to read:

5 ATCP 125.01 (1s) “Mobile Manufactured Home” means a any of the following:

6 (a) A manufactured home as defined in s. 101.91 (2) (am), Stats.

1 (b) A unit designed to be towed or transported and used as a residential dwelling, but
2 does not include a unit used primarily for camping, touring, or recreational purposes.

3 **SECTION 3.** ATCP 125.01 (1e) and (1m) are created to read:

4 ATCP 125.01 (1e) “CPI” means the annual average consumer price index – all urban
5 consumers, as calculated and published by the United States bureau of labor statistics.

6 (1m) “Electronic communications service” has the meaning given in s. ATCP 123.01 (5).

7 **SECTION 4.** ATCP 125.01 (2), (3) and (7) (intro.) are amended to read:

8 ATCP 125.01 (2) “~~Mobile~~ Manufactured home park community” means any tract of land
9 containing 2 or more sites.

10 (3) “Operator” means any person engaged in the business of renting sites in a ~~mobile~~
11 manufactured home park community to tenants. “Operator” includes officers, representatives,
12 agents and employees.

13 (7) (intro.) “Site” means any plot of land ~~which~~ that is rented or offered for rental for the
14 accommodation of a ~~mobile~~ manufactured home used for residential purposes. It does not
15 include a plot of land rented for the accommodation of a ~~mobile~~ manufactured home ~~which~~ that
16 is:

17 **SECTION 5.** ATCP 125.01 (8) is repealed.

18 **SECTION 6.** ATCP 125.01 (9) and (10) (a), (c) and (d) are amended to read:

19 ATCP 125.01 (9) “Tenant” means any person residing in a manufactured home, and
20 renting a site from an operator.

21 (10) (a) Electricity, ~~water, sewer, telephone,~~ and natural gas;

22 (c) Fuel oil supplied through a permanent central system in the ~~mobile~~ manufactured
23 home park community; and

1 (d) ~~Television~~ Electronic communication service.

2 SECTION 7. ATCP 125.02 (1) to (4) are amended to read:

3 **ATCP 125.02 Tie-in sales; separate or discriminatory charges.** No operator shall: (1)

4 Require, as a condition to the rental of any site, the purchase of a ~~mobile~~ manufactured home
5 from the operator or any dealer, manufacturer, or agent named by the operator.

6 (2) Represent to any person that the purchase of a ~~mobile~~ manufactured home from the
7 operator or any dealer, manufacturer, or agent named by the operator will give the purchaser an
8 advantage over others in the rental or continued occupancy of a site.

9 (3) Discriminate or threaten to discriminate in rental charges or in any other respect
10 against a tenant for failure of the tenant to purchase a ~~mobile~~ manufactured home from the
11 operator or any dealer, manufacturer, or agent named by the operator.

12 (4) Solicit or receive any payment or other thing of value from any seller of a ~~mobile~~
13 manufactured home for agreeing to rent a site to the purchaser of such ~~mobile~~ manufactured
14 home.

15 SECTION 8. ATCP 125.03 (1) (intro) and (a) are amended to read:

16 **ATCP 125.03 Rental agreement; requirements.** (1) Every rental agreement shall be in
17 writing. A copy of the rental agreement shall be furnished to the tenant at the time the rental
18 agreement is executed. If a ~~mobile~~ manufactured home is purchased from or through the
19 operator, a copy of the rental agreement shall be furnished to the tenant before the tenant signs
20 the ~~mobile~~ manufactured home purchase contract. The rental agreement shall conspicuously set
21 forth all terms and conditions affecting the rental of the site, and shall include:

1 (a) The amount of rent for each rent paying period and all property, services and
2 facilities provided by the operator and included in the rent. Except as provided in sub. (1) (am),
3 the amount of the rent shall be expressed in a dollar amount.

4 **SECTION 9.** ATCP 125.03 (1) (am) is created to read:

5 ATCP 125.03 (1) (am) If the rental agreement is for a period of three years or greater,
6 and all of the following conditions are met, the amount of rent due each paying period may be
7 expressed as a formula that includes a base dollar amount and a future adjustment factor tied to
8 the CPI:

9 1. The operator offered the tenant the option of entering into a rental agreement that was
10 for a period of less than three years.

11 2. The rental agreement specifies the initial amount of rent due for each rent paying
12 period, and the operator will provide the tenant with an actual dollar amount of rent due in future
13 rent paying periods as applicable.

14 3. If the actual dollar amount of rent due changes under the formula, the operator will
15 provide the tenant written notice at least 60 calendar days before the new actual dollar amount is
16 due.

17 **SECTION 10.** ATCP 125.03 (1) (d) and (e) are amended to read:

18 ATCP 125.03 (1) (d) The approximate size of the site and its location in the park
19 manufactured home community.

20 (e) The amount of the monthly ~~mobile home parking~~ municipal permit fee assessed by
21 local units of government and payable by the tenant. If the monthly fee is not known, an
22 approximation shall be given.

23 **SECTION 11.** ATCP 125.03 (1) (em) is created to read:

1 ATCP 125.03 (1) (em) The amount and due dates of fees assessed by local units of
2 government for waste hauling, recycling, or similar services payable by the tenant. If the amount
3 and due dates are not known, an approximation shall be given.

4 **SECTION 12.** ATCP 125.03 (1) (f) and (g) are amended to read:

5 ATCP 125.03 (1) (f) Notice that the operator reserves the right to screen the purchaser of
6 a tenant's ~~mobile~~ manufactured home before renting a ~~mobile home~~ site to the purchaser, subject
7 to s. 710.15, Stats.

8 (g) A disclosure as to whether the ~~mobile~~ manufactured home ~~park~~ community contains
9 an emergency shelter, and, if the park has an emergency shelter, the location of the emergency
10 shelter and procedures for its use.

11 **SECTION 13.** ATCP 125.03 (1) (h) is created to read:

12 ATCP 125.03 (1) (h) A copy of the manufactured home community rules and
13 regulations.

14 **SECTION 14.** ATCP 125.03 (4) (a) is amended to read:

15 ATCP 125.04 (4) (a) ~~Mobile home parking~~ Municipal permit fees, recycling fees, waste
16 hauling fees, or other fees assessed by local units of government.

17 **SECTION 15.** ATCP 125.03 (4) (c) (Note) is repealed.

18 **SECTION 16.** ATCP 125.04 (1) (intro), (b), and (c), (2) (d) and (e), and (3) (a) and (b) are
19 amended to read:

20 ATCP 125.04 (1) (intro) No operator may charge an entrance fee or exit fee in return for
21 allowing the movement of a mobile home into or out of a ~~mobile home park~~ manufactured home
22 community. This subsection does not apply to:

1 (b) A security deposit not exceeding the amount of ~~3~~ 2 months' rent or ~~\$350~~ \$750,
2 whichever is less.

3 (c) Material and labor costs incurred by the operator to move a tenant's mobile home
4 into or out of the ~~mobile home park~~ manufactured home community, to install the mobile home
5 on a site or remove it from a site, or to connect or disconnect utility services. The amount of any
6 charges, or the basis upon which charges are to be calculated, shall be clearly set forth in the
7 rental agreement.

8 (2) (d) Services involving the transportation of a mobile home to or from the site within
9 the ~~mobile home park~~ manufactured home community, if the operator can show that the person
10 providing the service has damaged the ~~park~~ property within the manufactured home
11 community during a previous move and failed to compensate the operator for the damages.

12 (e) A nondiscriminatory prohibition against sales solicitations within the ~~mobile home~~
13 ~~park~~ manufactured home community.

14 (3) (a) Charges for a utility service provided through the operator's facilities, if not
15 included in the rent, shall be based on the amount of the utility service used by tenants.
16 Charges for ~~television~~ electronic communication service provided through the operator's
17 facilities may be assessed in the form of a uniform charge to subscribing tenants, subject to par.

18 (b). Charges, or the method of computing charges for utility services provided through the
19 operator's facilities shall be set forth in the rental agreement under s. ATCP 125.03 (1) (b).

20 (b) If ~~television~~ electronic communication service is provided by the operator but not
21 included in the rent, the operator may not limit a tenant's access to ~~television~~ electronic
22 communication service provided by an outside source.

23 SECTION 17. ATCP 125.05 (Title) is amended to read:

1 **ATCP 125.05 (Title) Changes in rental terms or park manufactured home**
2 **community rules.**

3 **SECTION 18.** ATCP 125.05 (2) (b), (c), and (f), (3) and (4) are amended to read:

4 ATCP 125.05 (2) (b) Rules limiting occupancy of ~~mobile~~ manufactured homes with
5 respect to the number or age of occupants.

6 (c) Vehicle parking rules imposed by the ~~park~~ operator.

7 (f) Rules requiring tenants to repair or maintain their ~~mobile~~ manufactured home.

8 (3) Except as otherwise provided in this chapter, a ~~park~~ an operator may change or create
9 general ~~park~~ manufactured home community rules and regulations during the term of any rental
10 agreement or tenancy, provided all tenants are given at least 28 days prior written notice of any
11 proposed change, and an opportunity to meet with the operator or a representative of the operator
12 on the proposed change before it takes effect.

13 (4) Notice of proposed changes in rental terms and conditions or ~~park~~ manufactured
14 home community rules and regulations under this section may be furnished to the tenant in
15 person or by mail. Notice by mail shall be considered actual notice.

16 **SECTION 19.** ATCP 125.06 (Title) and (1) are amended to read:

17 **ATCP 125.06 Sale of ~~mobile~~ manufactured home; transfer of tenancy.** (1) No
18 operator may:

19 (a) Require any tenant to designate the operator, or any person named by the operator, as
20 agent for the sale of a tenant's ~~mobile~~ manufactured home, or unreasonably restrict the sale of a
21 tenant's ~~mobile~~ manufactured home by the tenant or an agent of the tenant's own choosing.

22 **Note:** Sections 710.15 (3) and (4), Stats., provide that:

23 *"(3) PROHIBITED CONSIDERATION OF AGE OF MOBILE HOME OR MANUFACTURED*
24 *HOME. (a) An operator may not deny a resident the opportunity to enter into or*
25 *renew, and may not include, exclude or alter any terms of, a lease to continue to*

1 locate a mobile home in the ~~park~~ community solely or in any part on the basis of
2 the age of the mobile home or manufactured home.

3 (b) An operator may not require the removal of a mobile home or manufactured
4 home from a ~~park~~ community solely or in any part of the basis of the age of the
5 mobile home, regardless of whether the ownership or occupancy of the mobile
6 home or manufactured home has changed or will change."

7 "(4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY OF
8 MOBILE HOME OR MANUFACTURED HOME. An operator may not require the removal
9 of a mobile home or manufactured home from a ~~park~~ community solely or in any
10 part because the ownership or occupancy of the mobile home or manufactured
11 home has changed or will change. An operator may refuse to enter into an initial
12 lease with a prospective resident or ~~mobile home~~ occupant for any other lawful
13 reason."
14

15 (b) Solicit or receive any payment or other thing of value as a condition to the

16 assignment or sublease of a rental agreement by a tenant, or as a condition to the transfer of
17 tenancy to a buyer of the tenant's ~~mobile~~ manufactured home.

18 (c) Sell, for placement in a ~~mobile home park~~ manufactured home community owned or
19 operated by the operator, any ~~mobile~~ manufactured home purchased from a tenant who was
20 prohibited from selling the home directly for placement in the ~~mobile home park~~ manufactured
21 home community.

22 (d) Refuse to rent a ~~mobile home~~ site to the purchaser of a tenant's ~~mobile~~ manufactured
23 home except for reason specified under s. 710.15 (5m), Stats. This does not prohibit the
24 screening of prospective tenants by an operator.

25 (e) Limit a tenant's ability to post, on the tenant's ~~mobile~~ manufactured home or on the
26 site on which the mobile home is located, a "For Sale" sign or other advertisement announcing
27 the tenant's offer to sell the tenant's ~~mobile~~ manufactured home if the limitation is not applied
28 uniformly to every person, including the operator and any ~~mobile~~ manufactured home dealer,
29 who sells or offers to sell a ~~mobile~~ manufactured home on site in the ~~mobile home park~~
30 manufactured home community.

1 **SECTION 20 .** ATCP 125.07 (Title) and (1) are amended to read:

2 **ATCP 125.07 (Title) Mobile Manufactured home relocation.** (1) No tenant shall be
3 required to relocate a mobile manufactured home within a ~~park~~ manufactured home community
4 during the term of the rental agreement, or to assume the cost of any required relocation under a
5 new or renewal rental agreement, except in emergency or where the tenant has violated the terms
6 and conditions of the rental agreement. This does not apply to a mobile home ~~which~~ that has
7 been vacated by the tenant.

8 **SECTION 21.** ATCP 125.08 (1) and (Note), and (3) are amended to read:

9 ATCP 125.08 (1) Whenever an operator terminates any rental agreement or refuses, upon
10 the expiration of a lease, to renew the lease or to enter into a new rental agreement, the operator
11 shall provide the tenant with written notice setting forth the reason for such termination or
12 refusal. Notices of termination shall comply with the requirements of s. 710.15 and ch. 704,
13 Stats., as applicable. If the rental agreement does not comply with the requirements of s. ATCP
14 125.03 (1) (intro.) and (2), the operator shall comply with the notice requirements of s. 704.17
15 (2), Stats., when terminating a tenancy, unless the ~~park~~ operator or tenant proves that other notice
16 requirements under s. 704.17 (1) or (3), Stats., are applicable.

17 **Note:** Section 710.15 (5m) Stats., provides that:

18 *"Notwithstanding ss. 704.17 and 704.19, the tenancy of a resident or ~~mobile~~*
19 *~~home~~ occupant in a ~~park~~ community may not be terminated, nor may the renewal*
20 *of the lease be denied by the ~~park~~ community operator, except upon any of the*
21 *following grounds:*

22 *(a) Failure to pay rent due, or failure to pay taxes or any other charges due for*
23 *which the ~~park~~ community owner or operator may be liable.*

24 *(b) Disorderly conduct that results in a disruption to the rights of others to the*
25 *peaceful enjoyment and use of the premises.*

26 *(c) Vandalism or commission of waste of the property.*

27 *(d) A breach of any term of the lease.*

28 *(e) Violation of ~~park~~ community rules that endangers the health or safety of*
29 *others or disrupts the right to the peaceful enjoyment and use of the premises by*

1 *others, after written notice to cease the violation has been delivered to the*
2 *resident or ~~mobile home~~ occupant.*

3 *(em) Violation of federal, state or local laws, rules or ordinances relating to*
4 *mobile homes or manufactured homes after written notice to cease the violation*
5 *has been delivered to the resident or ~~mobile home~~ occupant.*

6 *(f) The ~~park~~ community owner or operator seeks to retire the park permanently*
7 *from the housing market.*

8 *(g) The ~~park~~ community owner or operator is required to discontinue use of the*
9 *~~park~~ community for the purpose rented as a result of action taken against the ~~park~~*
10 *community owner or operator by local or state building or health authorities and*
11 *it is necessary for the premises to be vacated to satisfy the relief sought by the*
12 *action.*

13 *(h) The physical condition of the mobile home or manufactured home presents a*
14 *threat to the health or safety of its occupants or others in the ~~park~~ community or,*
15 *by its physical appearance, disrupts the right to the enjoyment and use of the ~~park~~*
16 *community by others.*

17 *(i) Refusal to sign a lease.*

18 *(j) Material misrepresentation in the application for tenancy.*

19 *(k) Other good cause."*
20

21 (3) No operator may solicit or receive any payment or other thing of value, except for
22 normal rental payments, in return for permitting a tenant to leave the tenant's mobile home in the
23 ~~park~~ manufactured home community upon termination of tenancy.

24 SECTION 22. ATCP 125.09 (1), (3) and (4) and (Note) are amended to read:

25 ATCP 125.09 (1) Make any false, deceptive, or misleading representation to induce a
26 ~~mobile~~ manufactured home sale or site rental, or make any representation inconsistent with or
27 contrary to the written rental agreement.

28 (3) Require any tenant to make permanent improvements to the ~~mobile home~~ ~~park~~
29 manufactured home community or any of its facilities, or assess any separate charge therefor.

30 This subsection does not prevent the operator from requiring the tenant to install the home
31 according to applicable installation codes.

32 (4) Enter a tenant's ~~mobile~~ manufactured home without the tenant's permission and
33 reasonable prior notice to the tenant. This does not prohibit the operator from entering a tenant's

1 ~~mobile~~ manufactured home if the tenant cannot be contacted and the operator reasonably
2 believes that entry is necessary because of emergency, or to preserve and protect the ~~mobile~~
3 manufactured home or the ~~mobile home park~~ manufactured home community.

4 **Note:** Entry by an operator into a tenant's ~~mobile~~ manufactured home may be prohibited
5 by other applicable law.
6

7 **SECTION 23.** ATCP 134.02 (2) is amended to read:

8 ATCP 134.02 (2) "Dwelling unit" means a structure or that part of a structure that is
9 primarily used as a home, residence, or place of abode. The term includes a ~~mobile~~ manufactured
10 home or ~~mobile~~ manufactured home site as defined in s. ATCP 125.01 (4) (1s) and (7).

11 **SECTION 24. EFFECTIVE DATE:** This rule takes effect on the first day of the month
12 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
13 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: **Manufactured Home Communities**
Adm. Code Reference: **ATCP 125**
Rules Clearinghouse #: **Not yet assigned**
DATCP Docket #: **12-R-06**

Rule Summary

This rule does all of the following:

- Updates the existing rule by incorporating and defining “manufactured home” and “manufactured home community.” Current definitions applies only to “mobile homes” and “mobile home parks.”
- Repeals the definition “television service” and creates the definition “electronic communication service” which will specify the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

Under the current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is three years or greater, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months’ rent, whichever is less. This rule updates the maximum security deposit to \$750, or two months’ rent, whichever is less.

Small Business Affected

This rule will have some limited effect on manufactured home community operators. Many operators are small businesses. According to the Department of Safety and Professional Services (DSPS) web page (www.dsps.wisconsin.gov), there are approximately 1,074 licensed manufactured home communities in Wisconsin, with a total of 52,316 home sites (these statistics are from an on-line listing of licensed manufactured home parks by DSPS (March, 2011)).

Many of the differences between this rule and the current rule are technical in nature (such as updating terms to conform to other rules and statutes, etc.) and have no impact.

One change that has an impact on small business involves the definition of “utility” in the rule. The current rule includes “television services” in the definition of “utility”. The proposed rule repeals “television services” and replaces it with “electronic communication services” which includes such services as cable service, video service, and internet access service as well as television service. These are services that in recent times are commonly bundled under one fee. Under the proposed rule, the manufactured home community operator must follow the current rules for charging for television services for these additional types of electronic communication services. This change may require the operator to incur the cost of sending an invoice to the tenant whenever charging the tenant for any of the services added to the definition of “utility.”

Other changes that might have some limited impact are listed below.

- ***Municipal waste hauling or recycling fees.*** Current rule prohibits manufactured home community operators from increasing rent and other charges during the term of the rental agreement. There are exceptions to this prohibition for utility services (that are not included in rent) and municipal permit fees. This rule also allows an exception for waste hauling fees charged by a municipal government.

This change may benefit manufactured home community operators because it allows them to pass municipal fee increases to tenants at the time they are incurred, rather than waiting until the next rental agreement renewal date.

- ***Inflation indexing on rental agreements of three years or longer.*** Current rule requires rental agreements to include the amount of the rent due in each rent-paying period. Under this proposed rule, rental agreements that are three years or longer may include a formula for adjusting future rental amounts based on the Consumer Price Index.

Manufactured homes can be financed using home mortgages. However, many lenders are hesitant to offer a mortgage if the term of the mortgage is longer than the term of the rental agreement. But, community operators are generally unwilling to commit to long-term leases under current rules because they are unwilling to specify a dollar amount that will be in place far into the future. This proposed rule should benefit manufactured home owners by making it more likely that they will be able to finance the purchase of their home as a mortgage (rather than personal property).

- **Maximum security deposits.** Current rule limits the amount of security deposit that an operator can collect to three months' rent or \$350, whichever is less. This rule provision dates back to 1987. \$350 in 1987 is roughly equivalent to \$715 in 2012. This proposed rule revises the maximum security deposit to either two months' rent or \$750, whichever is less.

Raising the dollar amount to \$750 may benefit some manufactured home community operators because it allows them to collect security deposits that are more realistic with current economics. Limiting the security deposit to two months rather than three will benefit tenants whose monthly rents are relatively low.

Reporting, Bookkeeping and other Procedures

This proposed rule does not make any changes from current rule relating to reporting, bookkeeping and other procedures.

Professional Skills Required

The proposed rule does not make any changes from current rule relating to professional skills required.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for "small businesses." The nature of the subject matter does not lend itself to differentiating between business sizes.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22 (2) (e), Stats.

Dated this 6 day of February, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

Sandy Chalmers, Administrator
Division of Trade and Consumer Protection

